

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

DARLENE NOVIDA SMITH,)	
)	
Movant,)	
)	
v.)	No. 1:07CV110 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on respondent's motion to dismiss movant's 28 U.S.C. § 2255 motion as out of time. The motion will be granted.

On March 29, 2006, the Court sentenced movant to 100 months' incarceration and 5 years of supervised release. Movant did not file a notice of appeal. On July 16, 2007, movant mailed the instant motion to vacate pursuant to 28 U.S.C. § 2255.

Rule 4(b) of the Rules Governing § 2255 Cases in the United States District Courts provides that a District Court may summarily dismiss a § 2255 motion if it plainly appears that the movant is not entitled to relief.

Under 28 U.S.C. § 2255:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Movant filed the instant § 2255 motion more than one year after the judgment of conviction became final. Additionally, none of the other limitations provisions in § 2255 apply to the § 2255 motion. As a result, this action will be dismissed pursuant to Rule 4(b) of the Rules Governing § 2255 Cases in the United States District Courts.

Accordingly,


IT IS HEREBY ORDERED that respondent's motion to dismiss is **GRANTED**.

IT IS FURTHER ORDERED that this case is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a Certificate of Appealability.

An appropriate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 22nd day of October, 2007.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE